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EX PARTE OR LATE FILED

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June 20, 2016

Accepted / Filed

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

JUN 20 2016

Federal Communications Commission
Office of the Secretary

Re: REDACTED – FOR PUBLIC INSPECTION
Purple Communications, Inc.
CG Docket Nos. 10-51 & 03-123

DOCKET FILE COPY ORIGINAL

Dear Ms. Dortch:

On behalf of Purple Communications, Inc. (Purple), pursuant to Sections 0.457, 0.459, and 1.419 of the Federal Communications Commission's (FCC or Commission) rules, please find enclosed two copies of a Redacted version of a Notice of Ex Parte filed by Purple on June 20, 2016 in the above-captioned dockets.¹

All information in the Attachment to the Notice of Ex Parte contained after the headings *****BEGIN CONFIDENTIAL***** and before the close headings *****END CONFIDENTIAL***** is confidential. All material contained inside those headings is commercial and business information that is not customarily disclosed to the public and is subject to Exemption 4 under the Freedom of Information Act.

As this information is submitted voluntarily and absent any requirement by statute, regulation, or the Commission, Purple requests that, in the event that the Commission denies Purple's request for confidentiality, the Commission return the materials without consideration of the contents therein.²

¹ See 47 C.F.R. §§ 0.457, 0.459, 1.419.

² 47 C.F.R. § 0.459(e).

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Should you have any questions concerning the foregoing information, please contact the undersigned.

Respectfully submitted,

/s/

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202-457-6159
Counsel to Purple Communications, Inc.

Accepted / Filed

June 20, 2016

JUN 20 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

Re: **Notice of Ex Parte – Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10-51 & 03-123**

Dear Ms. Dortch:

On Thursday, June 16, and Friday, June 17, representatives of Purple Communications, Inc. (Purple) met with staff of the Federal Communications Commission (FCC or “Commission”). On Thursday, June 16, Michael Strecker, Vice President of Regulatory Affairs of Purple, and Ben Tarbell of Squire Patton Boggs (US) LLP, Counsel to Purple, met with Nicholas Degani, Legal Advisor, Office of Commissioner Pai. On Friday, June 17, Michael Strecker, Paul Besozzi of Squire Patton Boggs (US) LLP, and Ben Tarbell met with: Diane Cornell, Special Counsel, Office of the Chairman; Travis Litman, Senior Legal Advisor, and Jennifer Thompson, Special Advisor, Office of Commissioner Rosenworcel; and Karen Peltz Strauss, Deputy Bureau Chief, Consumer and Governmental Affairs Bureau (“CGB”), Eliot Greenwald, Deputy Chief, Disability Rights Office (“DRO”), CGB, Andrew Multz, Compliance and Oversight Group Chief, Office of the Managing Director, Robert McConnell, ASL Consumer Specialist, DRO, CGB, and Jenny Ledig, Intern, DRO, CGB.

In the meetings, Purple reiterated its concern that the Telecommunications Relay Service user registration database (“TRS-URD”) is being implemented in a manner that is inconsistent with the Commission’s directives in the *2013 VRS Reform Order* and that will harm consumers and VRS market competition.¹ Purple gave staff the attached white paper discussing its concerns in detail.

¹ *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51

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In particular, Purple is concerned about Rolka Loube's ("RL") approach to TRS-URD user identifiers and validation. Although the Commission specified in the *2013 VRS Reform Order* that "each [TRS] user" would be assigned a "unique identifier," as currently designed, each TRS-URD user is forced to obtain a *different* identifying number for each provider they register with.² This would force users to separately go through a complete validation process with each provider with which the user registers, requiring the user to submit personal and sensitive information *each* time, rather than allowing the user to submit this information once and be validated under a unique identifier as the Commission required in the *2013 VRS Reform Order*. Requiring a redundant and laborious validation process for each provider is unnecessary, and will deter users from changing providers. This goes against the pro-competitive goals of the TRS-URD.

Purple also understands that RL has requested clarification as to whether calls from entity-registered devices, such as phones in deaf schools and in businesses, and public phones, are compensable. It is imperative that calls from these devices remain compensable.³ Just as hearing children can make calls on school phones, or hearing workers can use company phones, "functionally equivalent" telecommunications service requires that consumers who are deaf have access to school, business, and other entity-registered phones.⁴

Additionally, Purple reiterated the joint providers' request that the Commission accept TRS-URD validation documents if unexpired at the time the document is collected by the provider, regardless of when RL is notified about the document.⁵

Finally, Purple noted in the meetings that the scheduled dramatic VRS provider rate cuts are threatening competitive providers' viability and ability to effectively compete for market share.⁶ The *2013 VRS Reform Order* set forth a package of competition-stimulating structural reforms to be implemented concurrently with the 4-year declining rate schedule. Now, three years later, the VRS rates have marched steadily downward, yet the structural reforms remain on the drawing board. Purple hopes to work with the Commission in the near future to structure a rate methodology that is appropriate for VRS and that furthers the Commission's goal of reducing VRS costs while enabling true market competition.

& 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82, ¶ 73 (June 10, 2013) (*2013 VRS Reform Order*); see also Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Apr. 21, 2016).

² *2013 VRS Reform Order* ¶ 73.

³ See Convo, ASL Services, CSDVRS, Purple Communications, Sorenson Communications Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123, at 1-2 (May 26, 2016) (Joint Providers' May 26 Ex Parte).

⁴ See 47 U.S.C. § 225(a)(3), (b)(1).

⁵ Joint Providers' May 26 Ex Parte at 3.

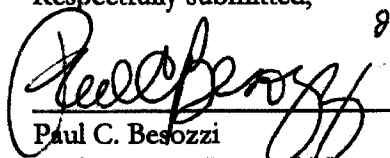
⁶ See Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123, at 3, Attachment (Dec. 21, 2015).

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul C. Besozzi", is written over a horizontal line. A small number "9" is written to the right of the signature.

Paul C. Besozzi

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202-457-5292

Counsel to Purple Communications, Inc.

cc: Nicholas Degani
Diane Cornell
Travis Litman
Jennifer Thompson
Karen Peltz Strauss
Eliot Greenwald
Robert McConnell
Andrew Mulitz
Jenny Ledig

TRS User Registration Database

Key Concerns and Issues

Executive Summary

In accordance with the 2013 VRS Reform Order, the FCC has selected Rolka Loube (RL) to be the TRS User Registration Database (TRS-URD) developer and administrator. As part of the development and implementation process, Rolka Loube has made several schema and policy decisions that are inconsistent with the underlying goals and objectives of the June 2013 Order. Moreover, these decisions would result in significant negative impacts to both consumers and providers, and the loss of critical VRS service to many users who rely on it.

Specifically, the approach developed by Rolka Loube to implement the TRS-URD presents the following immediate risks:

- Creates multiple unique IDs for each TRS user, rather than a single registration per user.
- Eliminates all public or entity-hosted VRS kiosks.
- Requires information collected to verify a user's identity to be valid as of the date of submission to Rolka, rather than as of the date the identifying data was collected by a provider.

A Single Unique ID for Each User: At the heart of the 2013 VRS Reform Order was the goal of creating a user registry in which each individual user of TRS services would be assigned a single unique ID. The purposes of this goal were to: 1) eliminate administrative burden on consumers and providers, 2) protect consumer privacy by reducing repeated identity verifications, 3) increase portability between providers (and thus, market competition), and 4) provide the Commission with a single, non-duplicative, master database of the consumers being served by the TRS Fund. However, RL has designed the TRS-URD to do the exact opposite. The RL TRS-URD will instead contain multiple unique IDs for each user, and require users to register separately with each TRS provider they want to use. This design decision by RL

runs directly counter to the goals of the 2013 VRS Reform Order, and promises to perpetuate some of the very challenges that the Order was written to address. The RL procedures will result in invasive impacts to consumers' privacy, limitations on consumer choice and market competition, and deny the Commission the clarity it was seeking as to the population served by TRS services and TRS Fund.

Compensability of Entity Owned and Public Kiosk Devices: ***BEGIN

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END CONFIDENTIAL Making these devices non-compensable will require providers to remove them, thus eliminating a critical access point for many Deaf employees and individuals that rely on the public kiosk for making their VRS calls, including some of the most vulnerable of VRS consumers.

Expiration Date on Alternative Documents: RL has taken the position that when a customer fails the initial validation process and alternative forms of identification are required, the expiration date on these documents must be unexpired as of the date and time the provider notifies the TRS-URD of their possession of that document.¹ The providers would argue that the document should be unexpired as of the date and time the provider verifies or collects the valid document, not when the TRS-URD is notified.² The resulting challenge is that if a document that was valid when verified by the provider, is expired as of the time the information is submitted to the TRS-URD, the consumer will then have to supply the provider with additional evidence of their identity. The TRS-URD registration process has already placed an undue burden on many consumers who have been forced to re-register with multiple

¹ See Convo, ASL Services, CSDVRS, Purple Communications, Sorenson Communications Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123, at 3 (May 26, 2016) (Joint Providers' May 26 Ex Parte).

² *Id.* 3.

providers whose service they already use, and any process that further increases the potential for providers to have to contact a consumer again and collect new evidence of the identity of a consumer whose identity was proven by valid identification is purposeless, invasive to consumers and should be avoided.

Failure to Assign a “Single” Unique ID for Each User

In the 2013 VRS Reform Order, the Commission provided that the “TRS-URD shall assign a unique identifier to each user in the TRS-URD,” and codified that requirement in its rules.³ The Commission further clarified this concept by stating that “when registering a user that is transferring service from another VRS provider, VRS providers shall obtain and submit a properly executed certification [of eligibility] if a query of the TRS-URD shows a properly executed certification *has not been filed*.”⁴ And, the Commission amended Rule Section 64.611 to include that exact same language.⁵

Moreover, the Commission explicitly pointed to this feature in the Final Regulatory Flexibility Act submission supporting the 2013 VRS Reform Order, stating not once, but twice, that the use of a unique TRS-URD identifier would reduce burdens on providers “when collecting information from users who switch providers, because the user information of those consumers is already in the database.”⁶

Despite the Commission’s explicit directive to assign a single, unique identifier to each user, the TRS-URD is currently being designed and implemented in the opposite way. In other words, the way the TRS-URD is being developed will force consumers to obtain a different TRS-URD identifying number for each provider they choose to register with and each of those

³ *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82, ¶73 (June 10, 2013) (*2013 VRS Reform Order*) (emphasis added); 47 C.F.R. § 64.615(a)(2); see also Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123, at 1-3 (Apr. 21, 2016).

⁴ *2013 VRS Reform Order* ¶82.

⁵ *2013 VRS Reform Order*, Appendix A – Final Rules, amending 64.611(a)(3)(ii)(B)(vi).

⁶ *2013 VRS Reform Order*, Appendix B – Final Regulatory Flexibility Analysis, ¶¶12, 23 (emphasis added).

providers will be forced to collect the consumers highly-sensitive Personally Identifiable Information (PII), resulting in the following:

- Forcing consumers to obtain a different identifying number for each provider is difficult, frustrating and unnecessary for consumers. It is a significant and unnecessary burden to require users to separately validate with each provider with which the user registers, rather than allowing the user to submit this information and be validated once under a single unique identifier – as anticipated by the Commission in 2013.
- Imposing a cumbersome and difficult process on consumers will hurt competition, contrary to the Commission's stated goals of increasing competition in the VRS Marketplace. By forcing consumers to undertake a separate, duplicative validation process to switch providers, those consumers will be deterred from changing providers in the future, thus limiting the ability of smaller providers to compete in the marketplace.
- Requiring multiple redundant enrollments each requiring the repeated submission of highly-sensitive information increases security risks. The current design of the TRS-URD creates unnecessary data privacy and security risks, because it would require a significant number of users to submit highly sensitive information and documents (such as a birth certificate, tax documents, or a passport) to customer service agents at multiple providers. Such a design of the TRS-URD multiplies the number of times this information is collected and increases the number of locations at which this information is stored and creates numerous ways for the information to be illegally accessed. If RL as TRS-URD Administrator would retain the validation documents, this vulnerability could be greatly reduced.
- In RL's updated TRS-URD instructions, released on approximately 6/1/2016, RL has added a risk code of "IE" for users previously designated as ineligible by a provider. By utilizing multiple unique IDs, and multiple registrations, the addition of this risk code poses risk for providers in the future. For example, if Provider A has determined that a person who registered for VRS is ineligible for the service (i.e., the person is found to be hearing), RL will flag that provider's unique ID for that consumer as ineligible. However, because there is no link between Provider A's consumer ID for that individual and those of other providers who might have registered the same individual, only Provider A will be aware of the fact the user is ineligible, while other providers could potentially continue processing VRS calls for that individual. By not assigning a single unique ID to this one user, this situation could result in the Fund paying for calls from a user who was

deemed “ineligible” by one provider, as the other providers were never made aware of this discovery. Additionally, this places the providers at risk for processing VRS calls from an individual that was flagged as “ineligible”. Based on prior Enforcement Bureau actions, what would prevent either the EB, or RL, from penalizing providers for processing calls from this individual?

Compensability of Entity and Kiosk Devices

In a letter sent to the Commission by RL on or around May 17, 2016, RL requested guidance on the handling of entity owned and kiosk devices for URD registration purposes.

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It is imperative for the Commission to ensure that calls from these devices remain compensable.⁷ The Americans with Disabilities Act (“ADA”) guarantees deaf Americans the right to functionally equivalent telecommunications service.⁸

In regards to entity-owned devices, hearing workers routinely use telephones provided to them by their employers to place and receive phone calls. Moreover, it’s generally not practical to register a business phone in the name of an individual employee as the business, rather than the employee, controls the device.⁹ This control extends to porting of the phone number, assignment of the device to a particular employee, or the decision to set-up a shared access videophone for multiple employees to use. Registering a business phone to an individual also raises privacy issues. For example, some government agencies cannot disclose the PII of their employees to a 3rd party agency for security reasons and registering an

⁷ Joint Providers’ May 26 Ex Parte at 1.

⁸ See 47 U.S.C. § 225(a)(3), (b)(1).

⁹ Joint Providers’ May 26 Ex Parte at 1.

employer's phone in the name of an individual employee prevents the employer from gaining access, through a request to VRS provider, to call-detail records, which may be necessary to monitor the employee's performance.¹⁰

Similarly, hearing individuals have general access to telephones in public spaces.¹¹ For example, children frequently rely on public phones in recreational centers to place public calls, and payphones still serve an important purpose in disasters and for individuals who do not have a cell phone. Like hearing individuals, deaf Americans rely on public phones in a wide variety of circumstances – including, for example, consumers who are indigent and cannot afford cell phones or internet connections may depend on making their VRS calls via the public kiosk in advocacy organizations or independent living centers.

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END CONFIDENTIAL Making these devices non-compensable, or requiring Deaf consumers to go through some elaborate log-in process not only goes against the mandate of the ADA, but also removes a crucial access point that is a Civil Right of Deaf Americans.

Documents Should Be Unexpired When Collected by the Provider

RL has taken the position that when a Deaf consumer fails their initial validation process and alternative forms of identification are required, those forms should be unexpired as of the date and time the provider notifies RL that they have taken possession of such a document.¹² Purple would argue that these forms should be unexpired as of the date and time of their collection by the provider regardless of when RL is notified of their existence. For example, if a consumer fails their initial validation and the provider collects a copy of their driver's license on Friday, that document should be unexpired as of that day. The risk of using RL's proposed process, is that there is the possibility that document might expire between the date it was collected (Friday in this example) and the date RL is notified of its existence. In other words, if

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 2.

¹² *Id.* at 3.

the provider collects the document on a Friday, but isn't able to notify RL of its existence until Monday, there is a possibility that document could expire between those two days.

The odds of a document expiring between the date collected by the provider and the date RL is notified might be slight, however, the TRS-URD is forcing consumers to validate their data multiple times already (once for every provider they register with), as well as in perpetuity every time they choose to switch providers. Any process that could insert the potential for provider(s) to have to contact a consumer again (i.e., because their document expired between collection and notification) should be considered anti-consumer and avoided at all costs.